

**THE DISTRICT COURT OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DENNIS SANTANDER SIMOY,

Defendant.

CRIMINAL CASE NO. 92-00010

**ORDER**

This matter is before the court on Defendant's pro se motion seeking to vacate his conviction. *See* ECF Nos. 116, 117. As Defendant's motion is a successive motion under § 2255,<sup>1</sup> the court will dismiss Defendant's motion as it fails to meet the statutory requirements set forth in § 2255(h).

**I. Procedural History**

This is not the first time Defendant has sought to attack his conviction. Defendant was convicted of first-degree murder on May 14, 1992 and sentenced to life imprisonment. After his conviction was affirmed, *see United States v. Simoy*, 998 F.2d 751 (9th Cir. 1993), Defendant filed his first § 2255 motion with the district court attacking his conviction for similar reasons set forth in his appeal. Docs. 88, 89. After considering the merits of Defendant's arguments, the district court denied the motion. Doc. 96.

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<sup>1</sup> All statutory references herein are to Title 28 of the United States Code.

1 Defendant sought a certificate of appealability to appeal the denial of his § 2255  
2 motion. Doc. 97. Reasoning that Defendant had not “made a substantial showing of the denial  
3 of a constitutional right” as required by 28 USC § 2253(c)(3) for such a certificate to be issued  
4 within the context of the denial of a § 2255 motion, the district court refused to issue the  
5 certificate of appealability. Doc. 98. The Ninth Circuit similarly declined to issue a certificate  
6 of appealability as Defendant had not made any substantial showing of the denial of a  
7 constitutional right. Doc. 98a.

8 Nearly two years later, on March 30, 1999, Defendant filed another motion, but this  
9 time styled the motion as a “Petition for Writ of Error Coram Nobis.” Doc. 99. Given the nature  
10 of the arguments made therein, the district court construed the motion as Defendant’s second §  
11 2255 motion. The district court reasoned that before it could consider any successive § 2255  
12 motion, Defendant had to first obtain certification from the appropriate court of appeals that his  
13 motion contained either newly discovered evidence or a new rule of constitutional law  
14 applicable to his case. Finding that Defendant’s motion presented neither and that he had not  
15 sought certification, the district court denied the motion. Doc. 102.

16 Defendant appealed the district court’s denial again. Doc. 103. On November 10, 1999,  
17 the Ninth Circuit denied Defendant’s appeal as he had not made “a substantial showing of the  
18 denial of a constitutional right.” Doc. 105.

## 19 **II. Analysis**

20 Here, Defendant has filed a new motion and attached an affidavit which together attack  
21 his conviction for several reasons: the jury instructions given during his trial were deficient; the  
22 prosecutor presented false evidence, tampered with evidence, and withheld evidence from  
23 discovery; the grand jury proceedings for his case were deficient; one of the main witnesses  
24 that testified against him was patently unreliable and thus the testimony should not have been

1 admitted; and the prosecutor improperly attacked Defendant's character during trial. He also  
2 appears to challenge to the court's subject matter jurisdiction based on his apparent status as an  
3 immigrant to the United States.

4 Although not styled as such, Defendant's motion presents several collateral attacks on  
5 his conviction and sentence and thus qualifies as his third 28 USC § 2255 motion. Under §  
6 2255(h),

7 [a] second or successive motion must be certified as provided in section 2244 by a  
8 panel of the appropriate court of appeals to contain—

9 (1) newly discovered evidence that, if proven and viewed in light of the evidence as a  
10 whole, would be sufficient to establish by clear and convincing evidence that no  
reasonable factfinder would have found the movant guilty of the offense; or

11 (2) a new rule of constitutional law [] made retroactive to cases on collateral review  
by the Supreme Court, that was previously unavailable.

12 28 U.S.C. § 2255(h). In this case, Defendant has filed not one, but two previous § 2255  
13 motions. Consequently, he is required to obtain certification from the appropriate court of  
14 appeals that his petition presents new evidence or a new rule of constitutional law applicable to  
15 his case. He has not sought any certification, and regardless, his motion does not present any  
16 new evidence or points to any new rule of constitutional law. As “the files and records of the  
17 case conclusively show that [Defendant's] motion does not meet the second or successive  
18 motion requirements” his motion is subject to summary dismissal without the need for a  
19 hearing. *See United States v. Villa-Gonzalez*, 208 F.3d 1160, 1165 (9th Cir. 2000).

20 Accordingly, Defendant's motion is **HEREBY DENIED**.

21 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: May 17, 2021